

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

January 27, 2005

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, January 27, 2005, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; James Barfield; Darrell Downing; John W. McKay Jr.; Bill Johnson; Bud Hentzen; Ronald Marnell; Bob Hernandez; Elizabeth Bishop; M.S. Mitchell; Denise Sherman and Gary K. Gibbs. Frank Garofalo was not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; David Barber, Advanced Plans Manager and Rose Simmering, Recording Secretary.

DUNLAP announced that Commissioner BOB HERNANDEZ had resigned from MAPC by noting that Mayor Carlos Mayans had received a resignation letter on January 26, 2005.

❖ PLANNING COMMISSION ITEMS

1. Approval of December 23, 2004 meeting minutes.

BARFIELD I have one correction on page 13; replace the word "every" with "ever."

MOTION: Approval of the December 23, 2004 meeting minutes as corrected by Commissioner Barfield on page 13.

MCKAY moved, **JOHNSON** seconded the motion, and it carried (10-0-2).

GIBBS and **BISHOP** abstained because they were not at the December 23, 2004 meeting.

2. **Case No.: DR2004-10** – Request Authorize the advertisement of an amendment to the Subdivision Regulations regarding public utility easements associated with lot splits, plats and vacations

The following revisions have been recommended by the Subdivision Committee on January 6, 2005, to clarify the need for additional easements associated with lot splits or vacation cases:

Section 7-205(A) Public Easements:

Section 7-205 (A) **Public Utility Easements.** Public utility easements shall be provided where necessary. Easements for **proposed utilities** shall be centered on rear or side lot lines and shall be at least 20-feet wide along rear lot lines and 10-feet wide along side lot lines. **Where necessary to** protect existing tree rows from damage, such easements may be widened approximately not to exceed 30 feet. **Except when specifically required the Planning Commission, where a lot split or vacation case is already served by existing utilities in easements that are less than the minimum widths required for proposed utilities, additional easement widths may be required only if consent to dedicate such additional easement is obtained from all adjacent properties in the entire block.** Utility easements for street lighting purposes shall not be required to exceed 10 feet in width.

If a utility easement is to also be used for drainage purposes, the easement shall be designated on the plat as both a utility and drainage easement, and additional width may be required. For plats or lot splits in areas with existing water and sewer mains, a public sewer easement or public water easement may be **required** to protect a private sewer or water line across one ownership to serve another ownership with the approval of the System Planning Division of the City of Wichita Water and Sewer Department.

NEIL STRAHL Planning staff presented the report. You will notice in your packet we did divide Item 2, into Item 2a and Item 2b. Item 2a consists of the revisions that are recommended by the Subdivision Committee on January 6, 2005. These have been prepared and proposed by Commissioner Mitchell, and as you will recall these regulations refer to existing utilities located in easements of substandard width. It is requiring additional easements only if there is consent from the adjoining property owners.

The next page we have is Item 2b, which are the revisions proposed by staff. These are merely a clarification of our existing policy whereby additional easements are dedicated automatically with any associated plat, lot split, or vacation case to upgrade substandard utility easements. Even though staff's proposal was not recommended by the Subdivision Committee, we have included it in your packet today because we had Westar Energy, SBC, and Wichita Water and Sewer Department all speaking out in favor of staff's proposal.

The next page is a letter from Westar Energy that was presented to the Subdivision Committee, and Mr. Horton, who wrote that letter, is not in attendance today, however, Westar is being represented today by Mr. Kent Myers. Also prior to the meeting you should have received a handout titled Additional Public Easements in Vacation/Lot Split Cases, and that is from the Wichita Water and Sewer Dept. We have their Assistant Director, Don Kirkland, here today and he would also like to address the Planning Commission.

DUNLAP Mitch you have a few comments and you have provided an additional handout today. Would you want to present now or wait until later?

MITCHELL I would prefer to wait until the staff and the other parties make their comments.

DON KIRKLAND, ASSISTANT DIRECTOR, WATER AND SEWER DEPARTMENT
Wichita-Sedgwick County Metropolitan Area Planning Commission
January 27, 2005

Additional Public Easements in Vacation/Lot Split Cases

COMMENTS

1. In many cases these easements are substandard and not wide enough to provide adequate room for normal maintenance. In most cases, sewer mains are the deepest and largest utility in the easement. OSHA regulations that were not in place, when many of these easements were acquired, require more working room. In some cases, there could be delays in making repairs in these narrow easements resulting in a negative impact to property owners along the easement.
2. In some, but not all cases, the setback could be as much as the additional easement. In these cases, the additional easement would not affect full use of the property.
3. The appraised value of the property would typically not be reduced solely as a result of a reasonable increase of easement width.
4. The county would not typically reduce the assessed value for property tax, since the easement would still be in the owner's name and his real property would not have changed.

It is the Water & Sewer Department's position that the requirement to obtain consent from all adjacent properties in the entire block would put an undue hardship on the utility in obtaining additional easement width necessary to perform routine maintenance. Further, it is our position in most cases that obtaining the additional easement would not negatively affect the property owner's full use of his or her property, and that this added requirement would be of benefit to the property owner.

We would like to speak in favor of Item 2b as prepared by staff. I have handed you a list of our comments, and basically we feel that in the cases of substandard easements that they don't provide adequate room for maintenance.

MITCHELL Your first paragraph, I agree with you, because if you need additional right-of-way or easement you need it all along where the repair is being done, not just on an isolated lot or two that might have had the lot split and/or setback vacation. What I am trying to do is to say, that if you need the easement, you need all of the property served by the repair area, not just one or two lots.

KIRKLAND That is true, but at least this will give us an opportunity, at anytime that happens, to get these easements in place, with the idea that as time goes on, and there may be other lot splits and other things happen on that lot that we can acquire those, and it makes it an automatic situation so that we don't have to be trying to look at every place like that, and it makes it happen so that we can go ahead and get those, and we don't have to be checking every time something is done like that to do that.

Often times if we had to get the approval of everyone in that block, all it would have to do is get one lot owner that we might not be able to contact, and that would cause us to have a problem on that particular one. That is what we are looking for, because we don't want to go through a lot of issues, to do something that was not foreseen when these easements were originally dedicated.

MITCHELL I agree with that, but over the past year, the few instances that we have had would take I don't know how many years to get a part of those easements all brought up to the standard on the basis that we are doing now, one lot at a time as some other activity is requested through zoning or vacation.

If it is necessary to widen those 16-foot easements to 20-foot, then why not suggest an ordinance that would do that unless the area objected to it?

KIRKLAND Well, every time that one of these lot splits occurred that would mean that we would have to go to everybody on that block and go through all of that to get this taken care of. Whereas, if it as proposed in Item 2b we wouldn't have to do that each time, and as lot splits occurred, or anything else occurred to that lot then that would automatically happen. As proposed in Item 2a, each time we have a lot split we would have to go to each one of the property owners in that whole block every time.

MITCHELL Either that or not get the easement.

KIRKLAND That is right, and we need the easement.

MITCHELL Would you favor an ordinance passed by the city that would automatically widen 16-foot easements to 20-foot?

KIRKLAND I would have to see a copy of the ordinance to see how it is written, and what would be involved in it.

MITCHELL Would that accomplish what you think a utility needs?

KIRKLAND We would have to see if there are any provisions in there; we would have to take a look at it and see. The bottom line is we need the additional easement and we don't feel it would impact the property owners.

MARNELL Do you have an active program going to identify the easements that are nonstandard and a process for trying to get those converted to standard?

KIRKLAND Not at this time.

MARNELL You say in your memo that you have problems with OSHA regulations, and you are not doing anything about it, except a lot at a time?

KIRKLAND Not in all cases. That would be a job because there are quite a few of those substandard easements that it would take a lot of time. We don't have the time to do each one of these individually but we do want to try to have the options so that as these come up we can do that to take care of that, and we are trying to look ahead.

MARNELL In the case of lots that come up here where it might be one lot in a row of 20, and you get the additional footage on that one lot, you think that has a practical benefit at all?

KIRKLAND I think it would over time. The hope is that if one property in that block sees the need to split it for some reason that there is a good possibility that others may see the same need or something else might happen in that area, that at that time you might see more people in that block. I see what you are saying. It does look like it is one at a time, but at least it gives us that option of it automatically happening, and we don't have to go through a lot of paperwork and additional effort that really doesn't serve a useful purpose as we see it to the property owners.

KENT MYERS, MANAGER COMMUNITY SUPPORT FOR WESTAR ENERGY As the Water Department, SBC, and the other utilities, we do support staff recommendations for some of the same reasons. Our concern is that if you have lot splits or vacations, and we come in for that particular lot, then we can come right down the road and continue to get service for that particular customer. If we can not get it farther down the road then that means we might have to come across the street and that would cause undue time limits on getting service to that customer and would cost more dollars to come around maybe to serve that customer. We are required by the Kansas Cooperation Commission (KCC) to serve that customer; then that cost is liable to be passed onto the developer.

MITCHELL As I tried to say a couple of weeks ago, it has never been my intent to limit you on easements that you need to provide new service. It is my understanding that these easements are in areas that are already served, and it is not a matter of bringing in new service from a different direction. If you were to come to the Subdivision Committee and say that through your company you need an easement to bring service to a split part of a lot, I don't think there would be any question that request would be recommended.

MYERS The way that we see the language, if you have a lot in the middle of a block that has been split or vacated and you have service on this side, and service on this side, then that means that we have to go down and get the easements on both sides, even though there are already existing facilities there. So that means if I can't get it on one side then I have to come around the block and get street right-of-way or different things like that and again that would be a cost and time to do service.

MITCHELL The highlighted language in 7-205 (a) specifically says served by existing utilities and easements and that is what this proposal is aimed at.

MYERS If you have existing facilities in a lot that has our facilities in it, but does not have service to a structure, either commercial or residential, and we have to come in and get more easement then that means that we are going to have to go on both sides, that is the way we interpret the language. Maybe the utilities should sit down with you and maybe address the language of the policy.

MITCHELL I don't think you would be denied an easement necessary to provide utilities to a split lot.

MYERS That is our concern and our letter states that.

DUNLAP Joe Lang from the Law Department, a question has come up about the potential of an ordinance. Can you help us with whether or not that would be a doable thing?

JOE LANG, FIRST ASSISTANT CITY ATTORNEY Commissioner Mitchell, could you state again what kind of ordinance you are talking about?

MITCHELL What the Water and Sewer Department representative was indicating is that he needs 20-foot easements anywhere he has services. It was my suggestion rather than pick off these one lot at a time, two-feet additional, that the City somehow widen those easements by ordinance, or whatever route would be necessary so that you would have those wider easements anywhere the City has service now.

DUNLAP Eliminating paperwork and effort here.

LANG I am trying to visualize how that would be done on a blanket 20-foot easement. What we do now is through the Subdivision Regulations, and that is setting up the requirements as they are platted, and vacations, and lot splits happen. I think it would have to come through a Subdivision Regulation rather than a city ordinance. It would have to be the ability for flexibility and individual circumstances where a 20-foot easement is not available.

MITCHELL If I read paragraph one of Mr. Kirkland's testimony, he is saying that OSHA regulations make it desirable to have those wider easements where they already have service. Is there anything your department can do to help provide those in a uniform way?

LANG I think under police powers the City could require that access to that area to meet OSHA requirements for excavation could be required, but I don't know that it would necessarily have to be an easement in that circumstance.

BISHOP If we did have such an ordinance, and did by proclamation that all utility easements must be 20 feet to meet it, would that require everyone to replat?

LANG There would be those types of concerns. I can see it going forward that something might be able to be done, but for the existing ones I am not working through my mind how that would work for existing ones.

BISHOP What I see, is that by having a policy that is required upon lot split, replatting, and so forth, that what it is doing, is not going back and forcing people to readdress the way their property is legally described.

LANG It is certainly better to have a trigger for an easement change, so that you are identifying a specific area in which you are doing an easement change, and can take care of it with a plat and notations on a plat.

JOHN SCHLEGEL If that were possible to do, could the City use its police powers to benefit of the private utilities as well, in providing for wider easements where there are existing utilities, or would that only apply to the City utilities?

LANG I think because they are regulated utilities that we could make that apply. That would be for telephone/electric. I am not sure how far that would go to some of the other utilities. Again, these police powers would be for a specific use at a specific time, and they would not be an ongoing new easement for that, it would just be to protect the public or protect the workers doing excavation.

DUNLAP I don't think we are ready to advertise this yet. I just feel like we have several open questions and we can proceed, and we can vote to advertise it, or we can defer it until Mr. Lang has an opportunity to study the situation and come back to us with his recommendation. Or we can return it to the Subdivision Committee for a study there.

MOTION: We defer this item until we have an opportunity to sit down with the Utility Companies, the Subdivision Committee of the Planning Commission, and Advance Plans of the Planning Commission, and the City Attorney, and the Planning Department staff and have a joint meeting.

MCKAY moved, **MITCHELL** seconded the motion.

AMENDED MOTION: We defer this Item until we have an opportunity to sit down with the Utility Companies, the Subdivision Committee of the Planning Commission, and Advance Plans of the Planning Commission, and the City Attorney, and the Planning Department staff and have a joint meeting and have a workshop on this Item.

SCHLEGEL Can we hold that workshop as part of the Subdivision Committee meeting? Because we would have most of the parties present for that meeting and then what we would do is simply invite anybody else that was interested to that meeting.

PLANNING COMMISSIONERS Yes.

MOTION CARRIED: 12-0.

❖ **SUBDIVISION ITEMS**
3. Consideration of Subdivision Committee recommendations

3-1. **SUB2005-01 – One-Step Final Plat – HANNEMAN ADDITION. located on the east side of Meridian and south of 37th Street North.**

NOTE: This is an unplatted site located within the City. The site has been approved for a zone change (ZON 2004-50) from SF-5, Single-Family Residential to NO, Neighborhood Office. A Protective Overlay (P-O #148) was also approved for this site addressing uses, signage, access, paving and lighting.

STAFF COMMENTS:

- A. City water services are available to serve the site. Fees in lieu of assessment regarding sewer connections are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. In accordance with the Protective Overlay complete access control was platted along Womer.
- E. Reference to K-96 Highway should be removed on Womer.
- F. Street right-of-width needs to be denoted for Womer.
- G. In accordance with the Protective Overlay, a cross-lot access agreement with the property to the south shall be provided.
- H. In accordance with the Protective Overlay, the applicant shall provide a No Protest Agreement for the future paving of Amidon.
- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above

groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.

- J. A PO Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved PO and its special conditions for development on this property.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve subject to staff recommendations, and the Subdivision Committee approval.

MITCHELL moved, **JOHNSON** seconded the motion, and it carried 12-0.

3-2. SUB2005-02 – One-Step Final Plat – CROSS POINTE ADDITION, located on the south side of 21st Street North and on the east side of Greenwich Road.

NOTE: This is a replat of a portion of Eastside Community Church Addition and the First Bible Baptist Church Addition. The site has been approved for a zone change (ZON 2004-44) from SF-5, Single-Family Residential to LC, Limited Commercial subject to platting. The Cross Pointe Community Unit Plan (CUP 2004-39, DP-279) was also approved for this site. The site is located within the 100-year floodplain.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **A temporary drainage easement is needed to cover the existing drainageway. A FEMA Map revision is needed. A guarantee is needed for drainage improvements.**
- D. Since drainage will be directed onto K-96, a letter shall be provided from KDOT indicating their agreement to accept such drainage.
- E. The following transportation improvements are required:

1. The applicant shall guarantee for a continuous accel/decel lane at major entrances on 21st Street North and Greenwich Road, left-turn bay at the easternmost opening on 21st St., and southbound center left-turn lane at major openings on Greenwich Road.
2. The applicant shall guarantee 100% share of traffic signalization for the major opening on 21st Street.
- F. Access controls have been platted in accordance with the CUP approval. The plat proposes six access openings along 21st St. North including two joint openings and two openings along Greenwich including one joint opening.
- G. The joint access openings shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveways within the easement should also be addressed by the text of the instrument.
- H. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- I. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- M. The MAPC signature block needs to reference "Morris K. Dunlap, Chair".
- N. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy has requested additional easements.
- X. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve subject to staff recommendations, and the Subdivision Committee approval.

MITCHELL moved, JOHNSON seconded the motion, and it carried 12-0.

3-3. DED2004-33 – Dedication of Access Control and DED 2004-34 – Dedication of a Drainage and Utility Easement, located on the northeast corner of 21st Street North and Webb Road.

LEGAL DESCRIPTIONS:

- a) Lot 4, Block 1, Tallgrass East Commercial Addition, Wichita Sedgwick County, Kansas. (Complete access control along Webb Road.)
- b) A 30-foot drainage and utility easement for a tract of land in Tallgrass East Commercial Addition, Wichita, Sedgwick County, Kansas, described as: Beginning at the southeast corner of Lot 2, Block 1; thence N 01°10'25" W, a distance of 291.23 feet; thence S 88°49'35" W, a distance of 30 feet; thence S 01°10'25" E, a distance of 30 feet; thence S 88°49'35" W, a distance of 40.69 feet; thence N 00°47'16" W, a distance of 279.50 feet; thence S 88°49'35" W, a distance of 30 feet; thence S 00°47'16" E, a distance of 309.50 feet; thence N 88°49'35" E, a distance of 70.89 feet; thence S 01°10'25" E, a distance of 231.23 feet; thence N 88°49'35" E, a distance of 30 feet to the point of beginning.

PURPOSE OF DEDICATIONS: These dedications are associated with a lot split case (SUB 2004-145) and are being dedicated for complete access control, except for one opening, along Webb Road and for construction and maintenance of public utilities.

AGENT/SURVEYOR: PEC, P.A., 303 S. Topeka, Wichita, KS 67202

STAFF RECOMMENDATION: Accept the Dedications.

MOTION: To approve subject to staff recommendations, and the Subdivision Committee approval.

MITCHELL moved, JOHNSON seconded the motion, and it carried 12-0.

❖ **PUBLIC HEARINGS – VACATION ITEMS**

4-1. VAC2004-67 – Request to Vacate a Platted Alley.

APPLICANTS/OWNERS: Waco Township c/o Charles Becker
James Robinson

LEGAL DESCRIPTION: Generally described as that portion of a platted 20-foot alley right-of-way (ROW), abutting the north side of Lots 9-13 and the south side of Lot 8, all in Block 2, all in the Oatville Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located midway between West Street and the Big Ditch Cowskin Floodway, more specifically northwest of the MacArthur Road – Baehr Street intersection (Council District IV)

REASON FOR REQUEST: Revert to private property

CURRENT ZONING: Site is public ROW. Properties south, north and east of the site are zoned "LI" Limited Industrial. Property west of the site is zoned SF-5" Single-family Residential.

The applicants are requesting consideration to vacate the 20-foot wide (x) 120/140-foot long portion of an east-west platted alley that abuts the south side of Lot 8 and the north sides of Lots 9-13, all in Block 2, all in the Oatville Addition. The alley ends at a reserve on its west side and intersects with Baehr Street on its east side. There are no franchised utilities, sewer lines, manholes or water lines in the easement. The nearest sewer service is 500 feet west of the site. The nearest water service is approximately ½ mile west (across the Big Ditch Cowskin Floodway) or east of the site. Both abutting property owners have signed the petition and application to vacate. The Oatville Addition was recorded with the Register of Deeds March 30, 1885.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted alley ROW, as described with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time January 6, 2005 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portions of the platted alley ROW and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted alley ROW, described in the petition should be approved with conditions:

- (1) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (2) Provide a restrictive covenant tying and binding the vacated platted alley ROW to the abutting properties
- (3) All improvements shall be according to City Standards.
- (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (2) Provide a restrictive covenant tying and binding the vacated platted alley ROW to the abutting properties
- (3) All improvements shall be according to City Standards.
- (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void.

MOTION: To approve subject to staff recommendations, and the Subdivision Committee approval.

MITCHELL moved, **JOHNSON** seconded the motion, and it carried 12-0.

4-2. **VAC2004-68 - Request to Vacate Contingent Street Right-of-Way.**

<u>OWNER/APPLICANT:</u>	Two Miles Home LLC Conway Banks c/o Jerod Heiman	Fouts Geller Building Group
<u>AGENT:</u>	Poe & Associates c/o Kenny Hill	
<u>LEGAL DESCRIPTION:</u>	Generally described as the platted contingent dedication of street right-of-way (ROW) that runs parallel to the north lot line of Lot 12 and the south lot line of Lot 11, all in Block 2, and ending 30-feet into Reserve "C", all in the Equestrian Estates Addition, Wichita, Sedgwick County, Kansas	
<u>LOCATION:</u>	Generally located approximately ¼ mile east of 127 th Street East, south of Harry Street, more specifically southeast of the Triple Crown Street Buckskin Street intersection (Council District II)	
<u>REASON FOR REQUEST:</u>	Development	
<u>CURRENT ZONING:</u>	The site is platted contingent dedication of public ROW. Properties north, west and south of the site are in PUD-12. Properties east of the site are zoned "SF-5" Single-family Residential and "SF-20" Single-family Residential	

The applicant is requesting vacation of the platted contingent dedication of street ROW that runs parallel to the north lot line of Lot 12 and the south lot line of Lot 12, all in Block 2, all in the Equestrian Estates Addition. Property east of the site, where the contingent dedication of street ROW ends, is not developed. One property east of the site is platted as Lot 1, Block 1, Timber Valley Estates 2nd Addition. There is dedicated public ROW that connect the Equestrian Estates Addition with the south abutting Sierra Hills Addition, which in turn is connected to the undeveloped and not platted "SF-20" zoned properties to the east by dedicated public ROW. These connections to the eastern properties are at the approximately mid-mile area. There are no water lines in contingent dedication of street ROW. Westar has equipment in a 10-foot easement, dedicated by separate instrument, that runs parallel to the north lot line of Lot 12 & the contingent dedication of street ROW; 5-foot of the 10-feet is in Lot 12 and the other 5-feet is in the contingent street ROW. There is a sewer line that runs through the contingent dedication of street ROW, where it crosses over the 30-foot wide portion of Reserve "C". The Equestrian Estates Addition was recorded with the Register of Deeds October 2, 2001.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives, and other interested parties Planning Staff recommends approval to vacate the contingent dedication of street ROW, with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time January 6, 2005 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described contingent dedication of street ROW and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the contingent dedication of street ROW described in the petition should be approved with conditions:

- (1) Vacate the contingent dedication for public street ROW, per the legal description.
- (2) Retain the 10-foot easement dedicated by separate instrument, that runs parallel to the north lot line of Lot 12 & the south side of the contingent dedication of street ROW; 5-foot of the 10-feet is in Lot 12 and the other 5-feet is in the contingent street ROW.
- (3) Retain that portion of Reserve "C" that the contingent dedication for public street ROW crosses over.
- (4) Provide a restrictive covenant tying and binding the vacated platted contingent dedication of street ROW to the abutting properties
- (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant. Provide easement(s) as needed for any relocated utilities.
- (6) All improvements shall be according to City Standards.
- (7) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate the contingent dedication for public street ROW, per the legal description.
2. Retain the 10-foot easement dedicated by separate instrument, that runs parallel to the north lot line of Lot 12 & the contingent dedication of street ROW; 5-foot of the 10-feet is in Lot 12 and the other 5-feet is in the contingent street ROW.
3. Retain that portion of Reserve "C" that the contingent dedication for public street ROW crosses over.
4. Provide a restrictive covenant tying and binding the vacated platted contingent dedication of street ROW to the abutting properties.
5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant. Provide easement(s) as needed for any relocated utilities.
6. All improvements shall be according to City Standards.
7. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve subject to staff recommendations, and the Subdivision Committee approval.

MITCHELL moved, **JOHNSON** seconded the motion, and it carried (11-0-1), **MCKAY** abstains has conflict of interest.

4-3. VAC2004-69 - Request to Vacate a portion of Volutsia Avenue.

APPLICANTS:

Larry Huckleby

LEGAL DESCRIPTION:

Generally described as the undeveloped portion of Volutsia Street that is between 8th Street North, Orchard Street, Lot 16, Bucks Addition and the applicant's unplatted property, Wichita, Sedgwick County, Kansas

LOCATION:

Generally located two blocks west of Hillside and two blocks south of 9th Street North (Council District I)

REASON FOR REQUEST:

Undeveloped ROW, revert to private use

CURRENT ZONING:

Site and surrounding properties are zoned "TF-3" Two-family residential

The applicant is requesting vacation of the undeveloped portion of Volutsia Street as previously described. The 60-foot (x) 110/128.50-foot undeveloped ROW dead-ends against railroad ROW at its south end. The developed portion of Volutsia, north of the site, ends against the undeveloped portion that the applicant is asking to have vacated. Orchard Street dead-ends against the southwest portion of the undeveloped Volutsia Street ROW. There are no water lines, manholes or sewer lines in the ROW. Westar has equipment in the eastern portion of the ROW. The east portion of the ROW was dedicated on the Bucks Addition, which was recorded with the Register of Deeds May 11, 1886. At this time staff has not able to determine when the west half of Volutsia was dedicated. The applicant owns the abutting eastern and western properties.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the Volutsia Street ROW, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time January 6, 2005 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portions of the street ROW created by condemnation ordinance and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the Volutsia Street ROW described in the petition should be approved with conditions:
1. Provide a title search to determine how and when the west half of the Volutsia Street ROW was dedicated.
 2. Retain the Volutsia Street ROW as a utility easement where the Westar equipment is located. Provide a metes and bounds description of that portion of the ROW retain as a utility easement.
 3. Provide a survey with a metes and bounds description of the vacated ROW, including a portion of the south end of the undeveloped portion of the Volutsia Street ROW to be retained as a possible cul-de-sac or turnaround for emergency service vehicles.
 4. Provide staff with a restrictive covenant tying and binding the vacated portion of the Volutsia Street ROW to the eastern and western properties. The applicant may find it necessary to plat the vacated ROW and his unplatted western tract if he plans to build on it.
 5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
 6. All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
 7. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- 1) Provide a title search to determine how and when the west half of the Volutsia Street ROW was dedicated.
- 2) Retain the Volutsia Street ROW as a utility easement where the Westar equipment is located. Provide a metes and bounds description of that portion of the ROW retained as a utility easement.
- 3) Provide a survey with a metes and bounds description of the vacated ROW, including a portion of the south end of the undeveloped portion of the Volutsia Street ROW to be retained as a possible cul-de-sac or a turnaround for emergency service vehicles.
- 4) Provide staff with a restrictive covenant tying and binding the vacated portion of the Volutsia Street ROW to the eastern and western properties. The applicant may find it necessary to plat the vacated ROW and his unplatted western tract if he plans to build on it.
- 5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- 6) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- 7) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

DUNLAP This item has been withdrawn by the applicant.

BARFIELD I have a question for staff, why was Item 4-3 withdrawn?

BILL LONGNECKER Planning staff presented the report. Staff had provided the applicant with several scenarios in regards to addressing the vacation of that portion of Volutsia Street. Even with the vacation of Volutsia ending short of its intersection with Orchard Street, there were still costs involved in regards to the applicant providing a survey showing the location of utilities in the right-of-way. The applicant would be required to hire a surveyor to locate those utilities and to provide a metes and bounds legal descriptions for an easement that would be retained to protect those utilities. The survey would also establish the amount of right-of-way that would have to be retained for any future cul-de-sac on the southern portion of Volutsia. The applicant felt like the cost involved for the surveyor and not being able to capture all of the right-of-way was cost prohibitive in regards to what he would capture with the remaining right-of-way in the vacation process.

BARFIELD Couldn't the applicant still acquire enough right-of-way without having to provide for a cul-de-sac?

LONGNECKER Public Works provided staff with a scaled drawing of the cul-de-sac, showing how the cul-de-sac was going to effect the right-of-way vacation. The right-of-way that was left over, by keeping the cul-de-sac in the retained southern portion of the right-of-way, was of a size that the applicant didn't feel that the cost involved to provide the survey out weighted the benefit in capturing what was left of that right-of-way.

BARFIELD Who was going to be required to pay for that cul-de-sac?

LONGNECKER The applicant was not going to have to pay for cul-de-sac because the applicant was going to be vacating only that portion of the right-of-way where the cul-de-sac was not going to be put, if it ever went in. By reducing the amount of right-of-way to be vacated, the cost of the cul-de-sac was not going to be born by the applicant.

BARFIELD In my estimation we have made this complex and we have victimized this applicant through what I call an unnecessary conditions imposed on the applicant.

4-4. VAC2004-70 - Request to Vacate a Platted Utility Easement.

<u>APPLICANTS/OWNERS:</u>	Consolidated Greenwich 21, LLC
<u>AGENT:</u>	PEC c/o Rob Hartman
<u>LEGAL DESCRIPTION:</u>	Generally described as the platted 20-foot utility easement running parallel to the south side of Reserve "A" and then through Reserve "A" to its point of intersection with the platted utility easement running parallel to the west side of Lot 6, Block 1, a distance of approximately 622-feet all in the Regency Lakes Commercial 2 nd Addition, Wichita, Sedgwick County, Kansas
<u>LOCATION:</u>	Generally located on the west side of Greenwich Road and north of 21 st Street North (Council District II)
<u>REASON FOR REQUEST:</u>	To allow development
<u>CURRENT ZONING:</u>	The site and abutting properties are zoned "LI" Limited Industrial with the same "CUP" Community Unit Plan overlay.

The applicant has applied for the vacation of the 20-foot (x) approximately 622-foot complete platted utility easement, as previously described. There are no sewer lines, manholes or water lines in the easement; pending comments from franchised utilities. The Regency Lakes Commercial 2nd Addition was recorded with the Register of Deeds February 21, 1997.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted utility easement as described in the attached legal, with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time January 6, 2005 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described platted utility easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted utility easement described in the petition should be approved with conditions:
- 1) Per the recommendation of Public Works and the franchised utilities, provide any needed replacement easements.

- 2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- 3) All improvements shall be according to City Standards.
- 4) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Per the recommendation of Public Works and the franchised utilities, provide any needed replacement easements.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
3. All improvements shall be according to City Standards.
4. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve subject to staff recommendations, and the Subdivision Committee approval.

MITCHELL moved, **JOHNSON** seconded the motion, and it carried 12-0.

❖ **PUBLIC HEARINGS – ZONING ITEMS**

5. **Case No.: DR2004-09** – Request Midtown Neighborhood-wide Rezoning Proposal. Presentation of the proposed rezoning, and request to approve the rezoning. Generally located North Boundary – 18th Street North, South Boundary – Murdock, East Boundary – Santa Fe, West Boundary – Little Arkansas River.

BACKGROUND:

In May 2004, following over a year of development and neighborhood input, the Wichita City Council adopted the Midtown Neighborhood Plan to serve as a blueprint for the conservation and revitalization of this historic neighborhood. The current zoning pattern for the Midtown neighborhood dates back over 50 years, and reflects a different vision for most of the neighborhood than has been identified in the recently adopted Midtown Neighborhood Plan. One of the priority action items identified in the Plan is the creation of a zoning approach that better reflects existing land use and future redevelopment opportunities.

Problems with Existing Zoning

The Mission of the Midtown Neighborhood Plan is "To enhance the appearance, safety, and quality of life in Midtown to make it an attractive and desirable place to live, work, and play for the benefit of all residents, businesses, visitors, and property owners." A specific goal of the plan is to "Maintain and improve the character of the neighborhood"; unfortunately, much of the neighborhood is "over-zoned" for its character. Single-family homes in "B" Multi-family zoning, offices and homes in "LI" Limited Industrial zoning are typical examples. This zoning, which is inconsistent with current uses and structures, creates the risk of incompatible land uses in the neighborhood, it creates a risk to the character of individual homes and buildings, and it creates a risk to the character of the neighborhood as a whole. Uses deemed inappropriate by the Midtown Neighborhood Association are permitted under much of the existing zoning. Property owners can be reluctant to re-invest in their properties due to inappropriate uses that are allowed under the current zoning. A goal of the rezoning is to "match the current use with the appropriate zoning."

Rezoning Process

The Midtown Neighborhood Rezoning Committee, consisting of neighborhood and city representatives, was formed to help recommend a new zoning scheme for the neighborhood. This rezoning scheme will address all properties located within the following area: **south of 18th Street, west of Santa Fe, north of Murdock, and east of the Little Arkansas River.**

A new zoning approach will be recommended to the Wichita City Council based upon the following principles:

1. No property will be rezoned against the wishes of the property owner. No changes will be proposed that will prevent residents, businesses or landlords from continuing their existing operations or uses.
2. No property will be rezoned to a higher intensity zoning classification. This is necessary in order to streamline the neighborhood rezoning initiative, while at the same time independently preserving full notification requirements normally associated with any property rezoning proposal for higher intensity uses.
3. Neighborhood-wide rezoning will be proposed that accommodates the wishes of property owners while facilitating future anticipated /desired land uses as envisioned in the *Midtown Neighborhood Plan Land Use Concept Map*. There will be no rezoning fees charged to property owners affected by this rezoning initiative.

Neighborhood-wide rezoning will be proposed that reflects the support and endorsement of the Historic Midtown Citizens' Association and the Midtown Neighborhood Plan Steering Committee.

Work began on the Midtown neighborhood-wide rezoning initiative in June of this year. An inventory and analysis of existing land uses and zoning was completed in July 2004. The Rezoning Committee subsequently completed a preliminary rezoning scheme that was presented at two neighborhood public meetings held on September 7th and October 26th 2004 at the Midtown Community Resource Center. Two letters were sent to all property owners in the Plan area, advising them of the rezoning initiative and inviting them to attend the neighborhood meetings. The Wichita Eagle published press releases for each of the public meetings, along with contact information. The District 6 Advisory Board heard the proposed rezoning on November 1st 2004 and January 3rd 2005. Each of these public meetings had question and answer sessions, and one-on-one discussions with the rezoning committee and staff. The Advance Plans Committee of MAPC heard the proposed rezoning on November 4th, November 18th, and December 9th 2004. Each meeting gave feedback, resulting in further refinements of the proposed rezoning.

Summary of Proposed Midtown Neighborhood Rezoning:

Much of the residential property currently zoned "B" Multi-family or "MF-29" Multi-family would be rezoned "TF-3" Two-family. However, certain pockets of "B" and "MF-29" are proposed to retain their current zoning, based on current use and future plans. The "TF-3" zoning accommodates existing and proposed parks, schools, and religious facilities. No property in the plan is proposed to rezone to "SF-5" Single-family. Much "LI" Limited-Industrial and "GC" General Commercial zoned property is proposed for "OW" Office Warehouse and "GO" General Office. "GC" General Commercial zoning on Broadway north of 13th is proposed as "LC" Limited Commercial. Several small pockets of "LC" Limited Commercial are proposed to become "NR" Neighborhood Retail. "LI" Limited Industrial property along Santa Fe and the UP/BNSF Rail Corridor is proposed for "B" Multi-family zoning, as the neighborhood plan recommends a future linear park.

Written notification accompanied by detailed map sets showing the proposed final zoning changes (if any) for each parcel, have been sent to all property owners in the rezoning area. Every property owner in the rezoning area has been given ample opportunity up to and including the public hearing to request that the existing zoning for their property remain as is. Thus far, approximately 70 property owners have requested to opt out of the proposed rezoning scheme. At least five property owners have worked with the committee to request a zoning "between" current zoning and what was originally proposed.

Note: The attached map dated 1/20/05 showing the proposed Rezoning for the Midtown Neighborhood will be subject to further revisions up to and including January 27, 2005, in order to accommodate those property owners who contact MAPD to have their property left as currently zoned.

CASE HISTORY: N/A

ADJACENT ZONING AND LAND USE:

NORTH:	"TF-3, MF-29, B"	Residential uses north of 18th Street.
SOUTH:	"LI, GC"	Commercial uses south of Murdock.
EAST:	"LI"	Industrial uses adjacent to Santa Fe / UPRR.
WEST:	"TF-3"	Residential uses west of the Little Arkansas River.

PUBLIC SERVICES: N/A

CONFORMANCE TO PLANS/POLICIES:

Wichita-Sedgwick County Comprehensive Plan: The proposed rezoning for the Midtown neighborhood is consistent with the primarily medium density residential use patterns prescribed for this area on the "Wichita Land Use Guide" map. Strategy XI.C4 of the Comprehensive Plan advocates the use of rezoning as tool in older neighborhoods to "prevent the encroachment of inappropriate development of a more intensive nature". The Residential Enhancement Strategy of the *Wichita-Sedgwick County Comprehensive Plan* identifies the proposed rezoning area as containing both "Conservation" and "Revitalization" areas. The plan identifies these areas as needing stabilization and protection from structural and market decline, and should be made more attractive for private investment.

Midtown Neighborhood Plan: The Rezoning proposed for the Midtown neighborhood is consistent with the recommendations contained in the adopted Midtown Plan, and constitutes appropriate plan implementation action.

RECOMMENDATION: The Rezoning proposed for the Midtown neighborhood is a tool to help implement the vision and direction contained in the Midtown Neighborhood Plan. Accordingly, planning staff recommends that the request be APPROVED as submitted, subject to those revisions to the Midtown Revised Rezoning Map dated 1/27/05, necessary to accommodate all requests from property owners to have their zoning left as is, and received by the MAPD prior to the public hearing on January 27, 2005.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The Rezoning proposal is consistent and reflective of the present character and uses within the neighborhood. The opt-out provision allows property owners to remain as currently zoned, if they so choose.
2. The suitability of the subject property for the uses to which it has been restricted. Much of the Midtown Neighborhood is "overzoned" for its current use. Unsuitable uses are permitted under the existing zoning. The proposed "downzoning" will actually restrict properties to more suitable uses with the surrounding residences and neighborhood.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: This rezoning is not a removal of restrictions but rather a "downzoning" or tightening of restrictions. The Rezoning proposal will have no adverse impacts on nearby properties. The proposed neighborhood rezoning will potentially have a beneficial long-term social and financial impact on adjoining neighborhoods and the downtown area of the City of Wichita.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The requested change is consistent with policy direction contained in both the Wichita-Sedgwick County Comprehensive Plan and the Midtown Neighborhood Plan.
5. Impact of the proposed development on community facilities: No new development is proposed in association with, or as a result of, the adoption of the Rezoning proposal.

JESS MCNEELY Planning staff presented the report.

DUNLAP Have there been major changes since the last time we went through this?

MCNEELY The copy that was sent to you in your packet is the exact same copy that is up here right now. We have probably have taken about 20 or more opt out forms since then so the only changes will be opt outs.

JANET MILLER, CHAIR OF NEIGHBORHOOD REZONING COMMITTEE, 1102 Jefferson, 67203 I live in the Midtown Area in which we are speaking about today. This is the first project of the Midtown Neighborhood Plan in which the MAPC approved for adoption in May 2004. Since that time over the past nine months a rezoning initiative committee has been studying the current zoning.

Why have we wanted to rezone? Citizens in this area want to preserve today's residential feel of the Midtown Neighborhood, and that includes also neighborhood retail and the current uses that are in the neighborhood. The property in this area however is zoned for much denser and heavier commercial and industrial uses than it is being used for today. That means over time that we stand to lose much residential property to heavier commercial and industrial uses and heavier residential which would not lend itself to maintaining the residential feel and uses of today's neighborhood.

One of the largest complaints that we as folks actively involved in working with the neighborhood on neighborhood projects, what we hear most often are complaints about problems that have occurred from zoning, such as: Incompatible uses going in next door to residential properties, to higher density or commercial or industrial uses, also often times we have houses that are divided up into maybe 8-9 units on one City lot which over time does cause noise issues, overcrowding, parking and trash problems.

We would like to prevent future incompatible uses, and we would like to lower the density levels which allow right now much heavier commercial and industrial uses. Last we would like to remedy the problem that we have with some residential structures which presently are actually zoned industrial, which means if their houses were damaged significantly they would not be able to rebuild their homes in those areas.

MCNEELY Up through today we are still receiving opt outs, we have had approximately 145 property owners opt out as of today. As I stated before, this is the existing zoning that you see before you on the map and this would be the proposed rezoning. The vast majority of the rezonings are properties that are currently zoned "B" Multi-family which is the brown color that are being proposed to be rezoned to "TF-3" Two-family which is the yellow color. Many of these properties that are currently zoned "B" Multi-family were developed early 1900's with single-family homes.

Our staff recommendation is prior to the public hearing today. We request that you approve the rezoning as submitted to you, the only change being opt outs that have come to the Planning Department since you received that packet. We advertised that we would receive opt outs up to the public hearing today. We would like to ask that since there are people who have come to the public hearing today, that we extend the opt out period to 5 p.m. today, to receive opt out forms.

MCKAY Jess, on Broadway, just north of Murdock on the east side we talked at length about that yellow color that is two-family dwelling with commercial all the way around it and you were going to check that out?

MCNEELY I am sorry, I don't remember exactly what that property is currently used for, I am hearing that is a church. All churches, schools and parks are recommended to go to "TF-3" zoning which accommodates all of those uses.

MCKAY We talked about with all the commercial around it leaving that church property alone.

DUNLAP Are you convinced that everyone who owns property in this area has had adequate notice?

MCNEELY Yes, I do believe they have had adequate notice.

DUNLAP On the opt outs, is there a trend why people are opting out? If we are going to allow the continued use the way that it is used today what is the reason for opting out?

MCNEELY Because they don't understand the rezoning. We receive opt out letters in the mail from people who are currently zoned "TF-3" and there is no proposed rezoning, so that tells us that there are people that don't know what we are doing. This is a difficult project to understand, zoning is a difficult thing to understand. When we have had the time to sit down and fully explain the implications on their property we find that many property owners who say owned a Single-family or a duplex on a property that is zoned "B", when we explained to them your rezoning is to "TF-3" you will be able to continue your use and your neighbors will be rezoned to "TF-3" as well, so people will be more likely to reinvest into their personal properties, generally speaking people see that in a positive light.

DUNLAP We don't want to change much of what has been done but in view of what you have just told us are we doing the right thing in your opinion by putting a 5 p.m. deadline on it today?

MCNEELY I believe we have been through a lengthy public process and I think that people who want to understand come forward and have chosen to work with us.

DUNLAP I know that we are legal but I am wondering if we are treating the neighbors' right.

JANET MILLER Yes, I am comfortable, we have been at this publicly since September. When we get our taxes raised or something else official happens on our property we generally get one notice and that is adequate so I feel that we have done extreme due diligence hear to get the word out. We have flexibility on the opt out time.

WILLIAM DRAPER, 1035 N. McLean Blvd., #501, 67203 I own property in the area. Real Estate is not just the ownership of dirt and space on this earth; it is ownership of a bundle of rights. The right to use it as you please subject to certain government limitations, the right to grant tenancy to people and things like that. If you give up a right, you give up some of the value to that property. Not only do you give it up you increase the value of land that has similar rights that is held by somebody else.

I will give you an example. I had property in McAdams, and I did opt out on the property, it was zoned for Multi-family use and so the value of my property went up, when other people gave up their rights to Multi-family use properties and my phone started ringing and people were trying to buy my property. The value of the property is determined by the rights that you still retain, that have not been seized by government or other agencies. Once you surrender those rights to a government agency it is very difficult, if not impossible, to ever get those right back, you have to hire an attorney by Kansas State Law, so that can be very expensive.

I would urge anyone that has the right to opt out and has any doubts about the ethics of all this, opt out, you can always cancel your opt out.

MARNELL I think the Committee that has worked on this Plan has done a good job, they have went the extra effort and notified property owners, however, I tend to agree with Mr. Draper in terms if I had property in there I would be opting out, if it was zoned higher than this, because you can always use lower uses but that is the individual property owners rights to waive if they chose to waive them.

MCKAY That church was zoned commercial and we down-zoned it to "TF-3" and being an organization, their chances, the same thing happened with the other church organization, they got the notice but they are done by committee, and they don't understand, so I think that because we are changing that church back I think we need to go talk to them and tell them exactly what is happening that we are down-zoning their property.

DUNLAP Your suggestion is to take that one piece of property out of the motion?

MCKAY No, I just think that they need to have the opportunity, and if you want to say we don't do it at 5 p.m. today that we give them until March 1st or sometime like that. Urban Faith Ministries has a number of pieces of property and they had no idea what was going on until staff went and talked to them. The proposal is that we are going to change that commercial and down-zone it and those people may or may not have caught it, because of the structure they work within.

HENTZEN I was going to suggest that the motion be to approve what is requested but that the 5 p.m. deadline is a couple weeks from now, and give the public more time to opt out.

DUNLAP Staff has already had this in their hands and to give it all back to them is not a very good direction for them.

HENTZEN I don't think they need to do it all over, but Janet did say we could extend the time. I would like to see a definite time on that.

BISHOP I would like to ask staff if that is a problem as far as public noticing is concerned and what legal requirements are.

SCHLEGEL We need a time certain at which the opt outs close so that we can prepare an Ordinance to present to the governing bodies. We would simply wait to prepare that Ordinance until the date that you tell us that you want to close out the opt out period.

MITCHELL What is the problem if we defer the closing date to March 1st, other than the Committee is not getting the initiative done?

MCNEELY There would be no problem extending the closing date for the opt out to whatever date that you feel appropriate. I will point out that anytime we have a rezoning on a property, after this body makes a decision on the rezoning, there is a two week protest period following this hearing, prior to us scheduling it for City council, to allow people two weeks following MAPC to protest. That is an example of where in our processes that we have some time after your decision to allow for people to protest. We can take your recommendation that the rezoning be approved, plus all opt outs up to whatever date you chose. We can contact the one specific church Mr. McKay suggested.

BISHOP I need clarification, Mr. Schlegel, you said that once we set a date then that date has to come and go before we can begin to prepare for the Governing Bodies? I would say maybe two weeks out would be far enough out.

MOTION: To approve subject to staff recommendations, and extend the opt out time to February 11, 2005, at 5 p.m.

MCKAY moved, **BISHOP** seconded the motion.

BARFIELD Mr. Dunlap, earlier you asked staff specifically if everybody was comfortable that everyone had been notified, and everybody was sure that there was done due diligence, so would that include the people that Commissioner McKay is talking about?

MCNEELY Yes, that property owner has been notified.

DUNLAP I would normally agree with you, but I have been deeply involved with a whole lot of churches recently and they tend to be pretty non-responsive in that they have their set standards on when they met and some of those people that they met with are not really aware of business activities and are more religious orientated. So I think it might be pretty handy to get a hold of the Pastor, Father, Preacher, in charge, and make sure that person understands so that they can transmit the information to whatever Trustee, or Board of Directors that they have.

MOTION CARRIED: 11-1. (BARFIELD, opposed)

DUNLAP Commissioner Bishop we have had the motion and the vote, I would like to ask if you or any of the other Commissioner that have specific properties you would like to have contacted again get a hold of Jess McNeely, but Elizabeth I would like you to make a statement about your previous involvement in this project.

BISHOP I was involved in the neighborhood plan process and I worked as a consultant for the Midtown Citizen Association for the neighborhood plan that included the objective or goal of doing a rezoning process, so I was familiar with the rezoning process but I did not work on the rezoning process at all and do not feel that I have a conflict of interest. I might also say that having worked on the neighborhood plan the gentlemen who is the minister of St. Paul's Methodist Church, was a member of that committee so he went through the process or working on the plan and saw what was suggested for that area. I agree it is a good idea to go the extra mile and make sure that the church itself has been contacted. He may no longer be at that church.

DUNLAP The point I wanted to make was that you were able to vote.

6. **Case No.: CON2004-42** - Fredrick and Jo Ann Barnes, Gregory Schmidt, and David Becker (owners); Darnell Thompson (agent) Request Conditional Use to allow a nightclub within 200 feet of a residential zoning district on property described as;

Lots 2-16 even on Cleveland, Corwin's Addition, Wichita, Sedgwick County, Kansas, and Lots 36 and 37 on Mathewson, Shirk's Addition, Wichita, Sedgwick County, Kansas. Generally located North of Central and west of Cleveland.

MAPC deferred December 23, 2004

BACKGROUND: The applicant requests a Conditional Use for a nightclub in an existing building, currently housing a dance hall with no liquor license. Nightclubs are a permitted use in the LI and GC districts, but require a Conditional Use when within 200 feet of residential zoning. The application area is currently permitted for a dance hall/cabaret, but cannot sell or serve alcohol. Approval of a nightclub Conditional Use would allow the applicant unlimited liquor sales. The application areas abut, or are across an alley from five single-family residences, and across a local street from another single-family residence. Both sites are within the North Industrial Corridor Contaminated Area.

The .79-acre site of the proposed nightclub is located north of Central and west of Cleveland; proposed off-site parking is located north of Central and west of Mathewson, one block east of the proposed night club. The accessory parking is necessary to meet the proposed nightclub-parking requirement. The character of the surrounding area is a mixture of general commercial uses along Central; industrial uses nearby, and residential uses on Cleveland and Mathewson Streets. The residences in this area show significant decline. North of both sites are single-family residences and vacant lots; south of both sites are LI and GC zoned commercial uses. East and west of the application area are commercial uses and single-family residences. South of the proposed nightclub, across Central, is a restaurant with a DER (restaurant / drinking establishment) license, limiting liquor sales to 50% of sales. Two blocks west of the application area, on the south side of Central at Pennsylvania, is Washington Elementary School with a significant recent addition and improvements.

CASE HISTORY: The Conditional Use application area was platted as a part of Corwins and Shirks Additions; the proposed nightclub building was built in 1955.

ADJACENT ZONING AND LAND USE:

NORTH: "LI", "GC", "B"	Vacant property, single-family residences
SOUTH: "LI", "GC"	Vehicle sales, Restaurant
EAST: "LI", "GC"	Vehicle sales, office
WEST: "B", "GC"	Single-family residences, Vehicle sales, Retail

PUBLIC SERVICES: The subject property fronts Central, which is a five-lane arterial street with an 80-foot right-of-way at this location. The current traffic volume on Central is approximately 15,441 vehicles per day. Cleveland and Mathewson are local streets with a 60-foot right-of-way. The 2030 Transportation Plan designates that Central will remain a five-lane arterial. The subject property has all other public utilities.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development, and a portion of the parking area as appropriate for "Low Density Residential" development. The Comprehensive Plan "Residential Area Enhancement Strategy Map" identifies the application area as within the targeted "Revitalization" Area. The plan recommends stabilization and revitalization within this area, making the area more attractive for private investment.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding

residential areas. The Comprehensive Plan Objective II.B. is to "Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments."

The Unified Zoning Code requires a Conditional Use for a nightclub when it is located within 200 feet of residences. As the application area is not currently permitted as a tavern or drinking establishment, approval of a nightclub Conditional Use would introduce a drinking establishment on this site.

RECOMMENDATION: Neighbors notified of this application have contacted MAPD in opposition to the requested Conditional Use for nightclub. Staff has received one protest petition, and one letter opposing the nightclub. Opposition cites concerns regarding the potential for illegal and dangerous activity from the proposed nightclub and associated parking.

Staff acknowledges that surrounding housing is deteriorating, and could be absorbed by surrounding commercial and industrial uses in the future. However, recent public investments in the area, and the neighborhood revitalization policies of the Comprehensive Plan indicate a desire to improve the neighborhood.

Based upon information available prior to the public hearings, planning staff recommends that the request for a Conditional Use be **DENIED**.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is a mix of commercial and industrial zoning and uses along the Central corridor; and, deteriorating single-family residential uses within commercial, industrial, and multi-family zoning to the north of that corridor. The neighborhood has recently been improved with additions to the Washington Elementary School, two blocks east of the application area. A total of five single-family residences abut or are across an alley from the application area. Another single-family residence is across Cleveland, a local street, from the application area. While the requested Conditional Use is not out of character with the other businesses fronting Central, a nightclub and associated parking is out of character with nearby single-family residences due to late hours and noise concerns.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GC" General Commercial and "LI" Limited Industrial, which accommodate office, retail, commercial and industrial land uses. The site is currently used as a dance hall without a liquor license, and can continue to operate under the current zoning and restrictions.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Currently the sale of alcoholic beverages is prohibited on this site. Approval of this request would allow for unlimited liquor sales, which could have detrimental impacts on the surrounding residences, considering their proximity to the proposed nightclub and associated parking.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" and "Low Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan does not contain guidelines specifically for nightclubs, drinking establishments or taverns. However, the Plan does have an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments. The Comprehensive Plan identifies the application area as within the targeted Residential "Revitalization" Area. The plan recommends stabilization and revitalization within this area, making the area more attractive for private investment.
5. Impact of the proposed development on community facilities: It is possible that approval of this request could result in an increased demand for police services.

However, should the MAPC find this application acceptable, staff recommends the following conditions for the Conditional Use:

1. The subject property shall be developed in general conformance with the approved site plan and all property development requirements of the Unified Zoning Code.
2. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

SHERMAN I have a potential conflict of interest, and will be abstaining.

JESS MCNEELY Planning staff presented report.

1. The original staff report for this case, a DAB I follow up memorandum, and a zoning interpretation memorandum from the OCI director are attached.

2. **BACKGROUND:** This request was considered by the MAPC on December 23, 2004, MAPC deferred the zone change at the request of the applicant. DAB I heard this request on January 3, 2005, and recommended denial by a vote of 8-0.

The agent for the applicant has met with staff, and has indicated a desire to restrict alcoholic beverage sales at the proposed site to less than 50 percent of total sales. The agent indicated to staff that he would ask MAPC to consider this restriction as a proposed condition of the requested conditional use.

The attached interpretation memorandum from the OCI Director further clarifies that the applicant requires a Conditional Use for Night Club in the City because he is requesting permits to allow entertainment, dancing by patrons, *and* the sale of alcoholic beverages.

3. RECOMMENDATION:

Consistent with the attached staff report, staff continues to recommend that the application be denied based on the findings of the report.

We have spoken with the agent for the applicant and that would be the gentleman who is intending to run a nightclub here, along with Kurt Schroeder, OCI. I believe what the agent is going to ask you today is that one of his proposed conditions for this Conditional Use be that the establishment be limited to a liquor license that would be a D-E-R license, which is a drinking establishment restaurant which limits liquor to less than 50 % of the gross revenues for the establishment.

To let you know, we have received 12 protest petitions at this time, we have some issues with some ownership on a few of those, so 8 of those protest petitions we currently list as being valid, that is for a total of 19.1% of the protest area, and I feel certain that following this hearing today that some of the issues will get resolved with the other protest petitions, which will more than likely amount in a greater than 20% protest petition, of course any protest will send this to WCC and a super-majority will be required to override a 20% protest.

In this case, the last time this was heard, there was a lot of discussion and even a letter submitted that was questionable, because it was not signed, that referred to the agent for the applicant. I would remind you that your decisions have to be made based on land use compatibility issues. Decisions can't be made on applicants or agents for applicants. This has to be based on the compatibility issues of residential property and a proposed nightclub.

Staff continues to recommend that the application be denied based on its proximity to Single-family residential homes. Especially the parking for the proposed nightclub, we don't feel that the uses would be compatible with Single-family residences. Particularly the accessory parking around the corner, a block away from the proposed use, which could encourage pedestrians going through that parking lot, and going through adjacent yards, and walking through the neighborhood to go to this establishment.

DUNLAP We have held the public hearing, and we did close the public hearing, and the reason for the deferral was the applicant was to meet with the neighborhood, and allow the DAB to hear it. Was there a meeting held where the applicant and the neighborhood got together?

MCNEELY When this was heard by the DAB which was January 3rd the agent for the applicant had not met with the neighborhood.

DUNLAP The DAB did hear it?

MCNEELY Yes.

BISHOP I have read the meeting minutes of December 23, 2004, and the motion says, "Deferral until January 27th", and open the public hearing at that time."

MARNELL We have this ongoing problem when we have public hearings and we defer them whether they are really opened or closed.

DUNLAP In this case we closed it twice and you may have reopened it with your motion.

MILLER That is what happened because I was thinking good we won't have to hear this again and then the motion said to leave it open.

MARNELL I think if we are going to have a public hearing and we are going to continue it, then if it is a public hearing then it ought to be open. From that standpoint I don't want to hear the same testimony from the same people again, because we got into that with the YMCA case where it wanted to be the same people saying the same thing, and if it is new testimony that would be fine, but I don't want to hear the same thing again.

DUNLAP If we have heard your point before and if you have spoken before, this is not an opportunity for you to tell us the same thing again. If you have not spoken before or you have a new point that you know we have not heard before we will certainly listen.

PAUL KIMBLE, WICHITA POLICE DEPARTMENT, COMMUNITY POLICING OFFICER, PATROL NORTH BUREAU, 3015 E. 21st St., Wichita, KS 67214 The past couple of days I did a survey asking residential citizens that live in that area the following are the results:

DT's Platinum II Club Survey Results 33 Residences and Businesses Surveyed

Hello, I am Officer Kimble and I am your neighborhood Community Policing Officer. To better serve your neighborhood, we would like to conduct a short survey with you. The survey is intended to let us know how you feel about a drinking establishment obtaining their license to serve alcohol in your neighborhood. We will be compiling this information and using it to present to the Metropolitan

Area Planning Commission regarding a hearing of a drinking establishment trying to obtain a liquor license in this neighborhood. If you would like to know the results of this survey please call me at 688-9500. We thank you in advance for your cooperation.

Would you want another drinking establishment to open and serve alcohol in your neighborhood?

3 Yes

27 No

Other Comments: No response, Don't care, No difference, Doesn't matter, We're surrounded by them.

Do feel that a bar type business would have a positive impact in your neighborhood?

1 Yes

29 No

Other Comments: Unknown, No response, Don't know.

Would you patronize (go drinking) at a bar that opened in your neighborhood?

3 Yes

28 No

Do feel that crime would increase if another bar or drinking establishment opened in your neighborhood?

24 Yes

3 No

Other Comments: If they don't show out, Possible, Same, Really don't know, Not really, Absolutely Definitely, Don't know, Vandalism.

Additional Comments: Concerned drinking and drug activity in the parking lot. Loitering in parking lot. Residence already contacted by bar owner about the problems in the parking lot. Two residences have been surveyed by bar owner. Police have already been over there with everyone lined up (they ID'ed DT's). Not a good thing going on there (they ID'ed DT's).

BARFIELD Officer Kimble, how long have you been a Community Officer in that area?

KIMBLE I have been there two years.

BARFIELD Are you aware of the club that sits on the Southwest corner of Central and Cleveland?

KIMBLE As far as I know that is zoned and has been zoned for a very long time, as a D-E-R.

BARFIELD How many of the associated problems have you encountered at the place at Central and Cleveland?

KIMBLE I don't work the south side of Central, I work the north side Central and work all the way up to the City limits north.

BARFIELD If there was a disturbance call at Central and Cleveland you would not be called?

KIMBLE I would not be responding unless it was an entire call out of the North and South Bureau.

DUNLAP Officer Kimble, I really appreciate you coming to our meeting today.

MCNEELY I would like to clarify the establishment southwest of Central and Cleveland is a restaurant D-E-R license. You can have by right in this zoning a restaurant that does sell alcohol but obviously less than 50% of their gross intake from those sales. It is when you cross the threshold to becoming a "Nightclub in the City" and you are within 200 feet of residential that you are required to get the Conditional Use. The establishment at Central and Cleveland, if they were to become a "Nightclub" or "Tavern" they would be going through this same process because they are within 200 feet of residential property.

BARFIELD They do serve alcohol at that location, correct?

MCNEELY Yes.

BARFIELD Most of the questions that the officers asked were alcohol related.

MCNEELY Just to clarify this property could by right operate as a restaurant D-E-R.

BARFIELD I am lost again, because I thought you said he amended the request to include D-E-R license.

MCNEELY That is something the agent can ask which could be a condition of the Conditional Use.

BISHOP In other words, it could be a D-E-R, as well as a nightclub, on top of each other but that the D-E-R indicates that there is more food being sold?

MCNEELY Yes.

BISHOP Which means that it is not truly, primarily, a drinking establishment?

MCNEELY If you have the combination of a cabaret license, a dance hall license, and any form of liquor license you are a "Night Club in the City". When someone applies to this Body for a Conditional Use for a "Night Club in the City", they are automatically given the right to get a full D-E tavern and full D-E liquor license. What this applicant has indicated is that he may ask you for the "Night Club in the City", a Conditional Use, but that one of his conditions be restriction to a D-E-R liquor license, which would be the restaurant liquor license, less than 50% of their income in alcohol as opposed to what he would normally be permitted outright under this Conditional Use, which would be a full D-E tavern license.

BISHOP What would be the purpose of doing that?

MCNEELY Because it is the only way that he can still have the combination of cabaret, dance hall, and sell any alcohol at all.

MILLER It permits a wider range, those three uses are then allowed with what he is requesting. The main difference between a D-E-R and just a "Drinking Establishment" is with a D-E-R you are restricted to the alcohol sales of less than 50% and with just a "Drinking Establishment" it is unlimited and you don't have to worry about how much food you are selling in relative to drinking. A "Night Club in the City" is in addition to what Jess was saying, if you do all three of those things, then that automatically makes you a nightclub and you have to have the right zoning. But if you also sell alcohol and offer live entertainment, or cabaret, the combination of those two make you a "Night Club". Part of this is zoning and part of this is Licensing, and we he is talking about D-E-R and D-E that is the Licensing portion of it.

DUNLAP At this point we don't need a complete review from the applicant, but if the applicant is here I would like him to come to the podium.

BARFIELD I think there may be some other public here as well today.

DUNLAP Mr. Thompson, did you have a meeting with the community?

DARNELL THOMPSON, Agent for the Applicant Yes I did.

DUNLAP How many people were there and when was it?

THOMPSON All of them was home on January 13th, I spoke with all the residence, the one resident that owns, I mean the property owner on Matthewson he also once I get established he is a local DJ and if I become he said he will DJ for me, he owns the property right behind which is the only house, right behind the property that's...

DUNLAP Did you have an organized meeting, or did you go to each of the people and talk to them?

THOMPSON I went to each house and spoke to each person.

DUNLAP Was that what we asked you to do in your mind? I think what we asked you to do was have a Community Meeting, and you did not do that, correct?

THOMPSON No, I did not.

DUNLAP That is ok; it is just in your mind that was not what we asked you to do.

THOMPSON What I did was, I had talked to Officer Kimble to find out when there was a Community Meeting to find out how I can get a hold of everybody, but the meeting did not uphold to my concern by the date. So what I did I went to each individual on Cleveland and Mathewson.

DUNLAP Did you appear at the DAB meeting?

THOMPSON No, I did not. I spoke with Virgena Gilkey the Neighborhood Assistant, when she called me and spoke with me that it was represented to her that I was a D-E, I went to here office and we sat down and I explained to her that no, that the City and Central Inspection knew that I was going for D-E-R which is my food sales is 50%, which at that time I went and spoke with Kurt Schroeder and we spoke with Jess McNeely.

DUNLAP On January 3rd, the DAB had a meeting, did you attend that meeting?

THOMPSON No, I did not.

DUNLAP Is there something new that you would like to add today to your application? I heard rumors that you might want to modify your request.

THOMPSON I would like the MAPC to know that to my understanding it wasn't presented to the Board that I applied for D-E-R, it was to my understanding that it was presented to you all as a D-E which doesn't include me to be 50% food sales, 50% alcohol. As I spoke last time I did say that I have been studying and following up on the City Laws and that was my recommendation that I wanted to do 50% sales and 50% alcohol. So as I remodeled this building, this establishment and was putting it together my main concern was the restaurant, but as I said before a lot of people like to drink beer with their lunch, and I have no problem with that and applied for the D-E-R. When I found out that it was a misunderstanding that I am supposed to be a D-E and what that means because that wasn't in my category. I got with Mr. McNeely and Virgena Gilkey, and Kurt Schroeder, and he was supposed to be making it understood. Because before he gave me my occupancy, he said make sure that I am 50% food sales, 50% alcohol.

DUNLAP So that is your request?

THOMPSON Yes, I did speak with the residence and a lot of them are waiting for me to open back up and serve food.

MITCHELL Do you plan to have entertainment?

THOMPSON Yes, I still plan to have entertainment, if possible.

MITCHELL It makes a big difference on what you apply for if you are going to have entertainment or not.

THOMPSON I applied for a D-E-R, which requires, your license requires, dance hall, cabaret and food. If I become a D-E in order to do that some of my license become different, so I went with D-E-R because like I say a lot of people like beer with their lunch and also entertainment. So I remodeled the place and gave the community a new facility.

NICKETA NEVILS, 668 WETMORE, WICHITA, KS 67209, Minister at the Immanuel House Christian Center, We are in direct opposition to a D-E license or a D-E-R license being given to a tavern. Since we last talked to you we have acquired blue prints for a childcare center that we would like to develop in the area. We want to also go along with your Comprehensive Plan the elder in our church has desires to get together with a lot of people in that area to try to get that area revitalized. We have plans to for our church, the childcare center, a place for women at risk, and all of these things are in direct opposition to what the gentleman here today is talking about. It does not do anything at all for the plans that we have. I do want to remind you that when we last spoke with you that there is an Alcohol Anonymous meeting there in that area, besides the Washington School is not very far from there. Immanuel House Christian Center is for growth, and we want to make a positive impact for that area as well as for Wichita Kansas.

LINDA MARLOW, 542 N. INDIANA, 67214 I am the Assistant Pastor of Immanuel House Christian Center and I would like to add one more thing. We advised that there was not a Neighborhood Association Board in that area and we decided at the church that we would get with the neighborhood and try and implement one and have the meetings located our church, if there was no other place to do that, because I think there is a need in the area also. On Sunday morning several of the neighbors had came to our church and they were still in opposition to this nightclub, I don't know who Mr. Thompson is talking to but we must be meeting with different people.

BARFIELD This is the second hearing that we have had and I am still not hearing from anybody that lives directly in this neighborhood at this meeting today protesting.

MARLOW That is what I am saying, they are coming to our church and they are meeting us on the land that we purchased which is directly behind the proposed nightclub. We have already purchased the land over there and that is when they tell us they don't want this nightclub in our community. I don't know why they are not coming to the meetings.

MARNELL How do you feel about drinking establishments in general?

MARLOW Being a Pastor, Minister, I really don't agree with it, but if it is outside the City limits fine, but when we are trying to do something positive in the neighborhoods and build good things for the children I think it should not be allowed in the neighborhood. As far as drinking it is each his own.

MARNELL Just not in the City limits.

JAMES NEVILS, 668 WETMORE, WICHITA, KS 67209, Reverend at the Immanuel House Christian Center I was at the last meeting here, and when the Planning Commission asked this gentlemen would he met with the people who had concerns about the establishment, he specifically said that he would me with the church, and he has not met with us, the church. We have a positive plan.

GIBBS What is the location of the church?

NEVILS The address is 546 N. Indiana.

BISHOP Jess, given the fact that the applicant has changed the application slightly does the staff recommend denial still?

MCNEELY Yes, our recommendation is denial.

JOHNSON Jess, presently if we do nothing here today, it still can be a drinking establishment as long as he sales more than 50% food correct?

MCNEELY Yes, the request before you does not deal with licensing, it deals with Conditional Use, Zoning items as Dale Miller had said. By right he could have a restaurant that did sale alcohol by right, now today, without coming before this body.

JOHNSON Basically what we are approving today is whether he can have live entertainment or not?

BISHOP I think there are some additional issues in terms of parking, having off-site parking.

MARNELL That is a Code problem, that is not zoning.

BISHOP It is part of the application; he couldn't be creating this application without that piece of the parking lot.

DUNLAP We can't apply that zone without the parking.

JOHNSON We are not changing the "LI" Limited Industrial zoning.

MOTION: Accept the recommendation of the staff and the DAB and deny the request.

MITCHELL moved, **BISHOP** seconded.

BARFIELD Even if we deny this application he can still deny as a club and serve alcohol?

DUNLAP He is licensed that way, yes.

MILLER He technically cannot be a club. He can be a restaurant that sells less than 50% alcohol.

DUNLAP Who is going to monitor that?

MILLER Office of Central Inspection.

MOTION carried 11-0-1. (SHERMAN, abstains)

7. **Case No.: CUP2004-61** – Crestview Plaza, LLC, Michael G. Loveland, Managing Member (owner/applicant) Request Amendment #1 to DP247 – 127th Retail Center Community Unit Plan on property described as;

Lot 1, 127th Retail Addition, Wichita, Sedgwick County, Kansas. Generally located Southwest corner of Central and 127th Street East

BACKGROUND: The applicant requests an Amendment to DP-247 127th Retail Center CUP, generally known as Crestview Plaza, to change the signage provisions of the CUP. The subject property is zoned "LC" Limited Commercial and is located southwest of the intersection of 127th Street East and Central. A retail strip center is located on a portion of Parcel 1, the main parcel of the CUP. A bank is located on the corner parcel. Two other parcels on Central are vacant.

The applicant proposes to amend General Provision #7.B, which contains the following statement: "No signs with rotating or flashing lights shall be permitted", so that the electronic message sign on Parcel 1 along Central can display a continuously moving image. Section 24.04.185.k. of the Sign Code indicates that an electronic message sign shall be classified as an animated, flashing, or moving sign when the rate of copy and/or graphic changes is more than one per second. Since the proposed electronic message sign would display animated, flashing, or moving images and text as defined by the Sign Code, an amendment of the CUP is needed. An electronic message sign for which images and text change no more often than once per second is permitted by right on the subject property.

The surrounding area is mostly vacant property to the north and east, except for a convenience store with a car wash directly to the north. Residential dwellings in a mix of densities from ½ acre to five acres are located to the south and west.

CASE HISTORY: The property is platted as 127th Retail Addition, recorded February 17, 2000. DP-247 127th Retail Center Community Unit Plan approved October 26, 1999.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"; "SF-5"	Convenience store, vacant
SOUTH: "SF-5"	Large lot residential
EAST: "LC"; "SF-5"	Vacant
WEST: "SF-5"	Vacant, residential

PUBLIC SERVICES: The proposed amendment pertains only to signage regulations and has no impact on public services.

CONFORMANCE TO PLANS/POLICIES: The Crestview Plaza CUP (DP-247) expressly prohibits signs with rotating or flashing lights on the subject property. Continuous movement signs violate the City of Wichita Sign Code standard adopted last year to clarify that LED type message boards may change messages so long as the messages are not changed more frequently than one second apart. The amendment in 2004 significantly shortened the previous time span from ten seconds. The proposed amendment is contrary to the City of Wichita Sign Code and to the planned development of the subject property and the surrounding area.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is mostly vacant property to the north and east, except for a convenience store with a car wash directly to the north. Residential dwellings in a mix of densities from ½ acre to five acres are located to the south and west.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial, and is currently developed with a retail strip mall. The proposed changes to the signage regulations are unnecessary for the subject property to be suitable for the uses that are permitted. Today the sign is operating within the defined standard of changing messages no more than one second apart.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: An animated, flashing, and moving sign would introduce a higher intensity of commercial signage than presently exists in the neighborhood, which would detrimentally affect nearby properties by introducing a distracting sign that is uncharacteristic of the neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: DP-247 127th Street Retail Center CUP (also known as Crestview Plaza) expressly prohibits signs with rotating or flashing lights on the subject property. The proposed amendment is contrary to the City of Wichita Sign Code and the planned development of the subject property and the surrounding area.

DALE MILLER Planning staff presented staff report. This is a request to amend a Community Unit Plan (CUP), and really the amendment has everything to do with signage and that is the crux of the request. Community Unit Plans for the last 12-14 years, maybe even longer, have had a prohibition on signage that rotates or flashes. Staff is recommending denial of this request; that is because of the fact that there is this long history that CUPs have had this prohibition. However we do recognize that at the time that was going on this sort of technology probably was not available at a cost effective level, and now we are beginning to see more requests. I think maybe this is the second one that we have had within a CUP. I do need to advise you that if this was not in a CUP and it was zoned "LC" he would be able to put this sign up without having to have this public review.

We feel like now that this technology is becoming more prevalent; that if this is approved then that probably gives staff a clue that we ought to be looking at this a little differently in the future, and we feel like it is a policy shift, and so therefore you are the test on how we ought to look at these in the future.

BARFIELD Can you go back to the photo of the current sign. Are you saying that he wants to incorporate into this sign the demonstration you just showed us?

MILLER As I understand it, this board is capable of doing what the demonstration showed you.

BARFIELD Do you have a picture of the buildings that accompany that sign?

MILLER I don't know that she shot it. It is basically a brick strip center that runs north and south, and maybe "L" shape.

BARFIELD The demo sign that we just saw, if you wanted to place that in the window of that building would that be prohibited?

DUNLAP That would be all right.

MILLER The C.U.P. prohibits any signage that flashes or rotates.

DUNLAP Not inside the building.

MILLER Ok, so you are saying in the window? I guess that would be ok.

DUNLAP It is not subject to a Sign Code inside the building.

MARNELL If this center had just been developed strictly as a "LC" property but did not have a C.U.P. requirement on it, that sign would be perfectly fine?

MILLER Correct.

MARNELL Or if it was slightly less in size?

MILLER If the CUP wasn't there, then the sign would be legal without the additional hearing.

MARNELL Do you see any basis for leaving that restriction there, since it doesn't apply to similarly situated property that just happens to fall under the CUP?

MILLER The arguments that one can make for leaving it in is that CUP's are suppose to demonstrate a higher level of development than just regular zoning. So if flashing and rotating signage is something that you find annoying then I would think that you would want to that restriction to remain.

MARNELL This gets into one of those areas that I know what it is when I see it. The rotating light like the old top of police cars and the strobe lights should be prohibited from adjacency of right-of-way but this kind of thing is perfectly fine. I don't know how you would alter those, and maybe we shouldn't be talking about altering the whole thing since we are dealing with a specific case.

MITCHELL What is it that you are trying to protect us from? I can understand the traffic problems of certain lights near where traffic is going back and forth. Is there something inherent in the current policy that I don't understand that is really protecting the public?

MILLER This sign happens to be located maybe 1/2 way down from the intersection. It is not right on the corner and so there is less of a chance that something flashing would be impacting the intersection. I do think that there is a safety issue. There is at least one other sign on the west side of town that I have had a number of people ask me how that got there, located at Central and Ridge, the northwest corner, it is a pawn shop. It flashes and does all kinds of stuff, and at night I have several people tell me that they find that very distracting.

BARFIELD Basically we are talking about flashing lights and strobe lights and this technology, I believe, is called streaming. In my estimate it does not have nearly the detrimental effect as say a strobe light or a flashing light.

MILLER That is why we think this is important for you to discuss this.

MIKE LOVELAND Owner and developer of Crestview Plaza In 1994, I started acquiring houses on the southwest corner of Central and 127th Street and people in the neighborhood knew of my development plans, and what they told me is that they wanted me to make sure I did a nice development. In 2001, I developed the center, and I feel like I have built a very, very, nice center at that corner, and I have the first phase done. It is all brick, and I even bricked the backside of the building from the neighborhood, so you don't see the gas lines, and electric and everything on the backside.

I will eventually have 40,000 square feet of retail not including that, which will be developed on the pad sites out front. It is basically two buildings in the back. In providing signage and exposure for the tenants in the back, I could have erected a sign which was larger and was capable of putting more names than I am putting on there. Instead I have what I consider a very nice sign, and with the animation it is very important in exposing my tenants to the market. Removal of this restriction will allow better exposure for these tenants and allow some very nice and some creative ways to expose my tenants to the market. This sign is on the cutting edge of technology and is different than signs on other locations. With the start up of this program with this sign, it shows a waving American flag. I ask you to allow removal of the restriction to help me in insuring the future success of what I consider a very nice center on the east side of Wichita.

SHERI DAWN PROCTOR. #7 Stevie Court, Goddard, KS 67052 I came here today to join in with the denial side but after seeing the demonstration; I own two lots around the corner from this development, and I think Mr. Loveland has done a wonderful job in the design of this area. I think with the changing technology of the sign that I the definition of the previous requirements would be more of beacon lights or the flashing lights on a police car. I really find the graphics and what they are requesting really appealing, and I don't think it will be a safety hazard, and I think it will help enhance his development.

DUNLAP I am familiar with signs and I was instrumental in working with the previous Planning Director and OCI where we wrote the current Sign Code that caused this problem. The situation at that point, about 15 years ago, we had a number of portable signs that had arrows on top of them and they had flashing lights that directed you with that arrow, and they were mostly yellow, and it was conflicting with highway information. At that time this technology did not exist so what we simply did was say you can't have moving signs or flashing signs. Then they came along with the change of technology and what we are not seeing here is a change all the way to what we would call a streaming sign where you can show pictures, and they are of high quality. The technology exists and the software exists but this sign is not capable of that. As far east as I think St. Cloud Place's entrance is, you can see this sign and it does draw attention, and when I was there it was not changing at all much less once every second.

It seems to me that we need to do two things, we need to remove the restriction, and I will support that on this particular sign, because of its location, and because of the quality of the area. The other thing that we need to do is suggest that we revisit the Sign Code to bring it into compliance, and bring it up to date with the current technology. This is the third time that we have had this, because the first two times, the first time they didn't have to ask us, and the other time was a club on west 21st Street, and it was what we would call a full vision sign, and we haven't had any complaints on it since it has been up that I am aware of.

MOTION: To remove the restriction on the sign from this property from this C.U.P.

DUNLAP moved, **MARNELL** seconded.

DUNLAP I would like a review of the Sign Code.

SCHLEGEL Do you want to assign that to a small committee to work on that?

DUNLAP It has to be OCI involvement to.

MARNELL How about Advanced Plans?

DUNLAP It could be Advanced Plans and we also have to get OCI involved.

SCHLEGEL We can arrange for OCI to be at one of your Advanced Plans meetings.

KNEBEL The Sign Code is not the issue, the Sign Code allows a moving sign, and it is not prohibited. The problem is the provision going into the CUP's, which is a standard provision, and that is probably what needs to be reviewed.

DUNLAP But the Sign Code does not recognize a full vision board. I will give you an example; there is a new sign on K-96 on the east side of town that is really stretching the value of the full vision board. I think we are going to be faced by that and I expected complaints by now and I expected something here today on that. So I think we still need to review that.

BISHOP I will be opposing this motion because as far out as that is that is an extremely urban area and we are going beyond the suburban experience.

MOTION Carried 11-1. (BISHOP, opposed)

DUNLAP I would like to ask that at our next Advance Plans Committee meeting have OCI come and discuss this Sign Code issue with us.

MARNELL I think Scott pointed out that it wasn't OCI, is it a Subdivision Regulations, Zoning Regulations, or is it just a policy to put those things in CUP's?

DUNLAP It is part of that laundry list we used to have, you want this you agree with that.

MARNELL Maybe we could just direct John to speak to the appropriate parties.

DUNLAP That would be good, and I tell you why it is OCI. Because they are the ones that get the complaints and they are the ones that are charged with the enforcement.

8. **Case No.: CON2004-45** – Quik Sand, Inc., (lessee, Chuck Hill) / City of Wichita (owner/lessor, John Philbrick) Request Conditional Use to extract sand and gravel on property zoned "SF-5" Single-family Residential and "LC" Limited Commercial on property described as;

The Southwest Quarter (1/4) of Section Twenty-Three (23); and the Southeast Quarter (1/4) of Section Twenty-Three (23), except Twelve (12) acres for Floodways; and Government Lot Four (4) except Twenty-Four and Ninety-Two Hundredth (24.92) acres for floodway, in the Southwest Quarter of Section 24; and Government Lot Six (6), and Government Lot Three (3) and Government Lot Four (4) in the Northwest Quarter of Section Twenty-Six (26), and the South Half (1/2) of the Northwest Quarter of Section Twenty-Six (26), except Eleven and Forty-Nine Hundredths (11.49) acres acquired for K-96 Highway, all in Township Twenty-Six (26) South, Range One (1) West of the Sixth Principal Meridian, Sedgwick County, Kansas, containing 459.55 acres, more or less; except that part designated as Hoover Road. Generally located North of K-96 between Hoover and West Street

BACKGROUND: The applicants are seeking approval of a Conditional Use to permit sand extraction and mining on an upside-down, "L"-shaped unplatted tract containing 460 acres located north of Highway K-96 and east of Hoover Road. The application area is mostly zoned "SF-5" Single-family Residential, but there are approximately 30 acres of "LC" Limited Commercial zoning on the site. The site is currently undeveloped and surrounded by an extensive pine hedgerow on three sides. The site is fenced.

Approximately 236 acres of the site would be excavated, creating four lakes ranging in size from 7.62 acres to 152.32 acres. With respect to the Arkansas River, the closest excavation is approximately 338 feet away from the site's eastern property line, with another 218 feet further east to the channel of the Arkansas River for a total of 556 feet from the river. Excavation of the sand is expected to take 20 years and could generate over 100 truck trips a day at peak times. Access to the site would be via West Street. A 12.33-acre staging area is proposed near the center of the site. Storage of overburden material would be along the eastern side of the site, backing up to the Arkansas River.

The proposed excavations are designed to provide room for redevelopment of the site as open space, playground, outdoor recreation and other public infrastructure uses. The redevelopment plan depicts two potential sites for a wastewater treatment plant and 20 acres of "developable land." This request is strictly for sand extraction, so additional zoning and/or Conditional Use approvals would be required before any use not permitted by the site's current zoning or the requested Conditional Use could occur. The area designated as "developable land" is zoned "SF-5" and would require rezoning to another district to permit commercial development. A wastewater treatment plant is classified by the Unified Zoning Code as a "utility, major," and would require Conditional Use approval. Surrounding properties are predominantly zoned SF-20 (north, south and west), and primarily used for farm ground. To the north, south and west there are scattered farmsteads, a sand pit and a closed landfill. "SF-5" Single-family Residential zoning is located to the east, across the Arkansas River, and is developed with an urban scale single-family subdivision.

CASE HISTORY: DR 95-4, a request for a landfill, was deferred indefinitely on April 18, 1995.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20" Single-family Residential	sand pit, farm ground CU-432 to permit sand extraction
SOUTH:	"SF-20" Single-family Residential "SF-5" Single-family Residential	Highway K-96, farm ground, closed landfill
EAST:	"SF-5" Single-family Residential	closed landfill, Arkansas River single-family residences
WEST:	"SF-20" Single-family Residential "LC" Limited Commercial;	farmsteads and farm ground

PUBLIC SERVICES: West Street, at this location, provided access to the Brooks landfill when it was open and it had lots of truck traffic. Sand extraction does not require public sewer or water services, and neither service is adjacent to the site. 45th Street right-of-way appears to still exist, running east from "T" intersection of 45th and Hoover over to West Street. This right-of-way probably should be vacated or accounted for in the operations and redevelopment plan.

CONFORMANCE TO PLANS/POLICIES: The *Wichita Land Use Guide* map depicts this site as being located within the City of Wichita's 2030 "urban service area," and is appropriate for both industrial and open space uses. The Comprehensive Plan contains policies that look favorably on uses that are resource based. The plan also contains recommendations stating that industrial uses should not feed directly to local streets in residential areas; and that industrial areas should be generally located away from existing residential area, and sited so as not to generate industrial traffic through less intensive areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. Extraction operations on the site shall proceed in accordance with the approved operations and redevelopment site plans (including any modifications to the extent of excavations required to protect the western high bank of the Arkansas River or proposed public facilities), and be subject to the supplementary use regulations found in the *Unified Zoning Code* at Article III, Section III-D, gg (pp.147-149, attached). If limitations on the scope of excavation are required after final approval, the applicant shall provide a revised site plan depicting those restrictions.

2. The Conditional Use for sand extraction shall be valid for 20 years following the date of final action (either MAPC or governing body) approving extraction operations. The applicant may apply for an administrative adjustment for an additional two years should extraction operations not be completed at the end of the initial 20-year time period. During this period of time, the land may be returned to the City in phases to be used for recreation and as a public park.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is zoned "SF-20" Single-family Residential with a couple of 600-foot by 600-foot squares of "LC" Limited Commercial zoning located on the northwest and southwest corners of 45th Street and Hoover. The application area is adjacent to: K-96 Highway, a closed landfill, an active sand pit, farm ground, farmsteads and the Arkansas River. While the landfill was active development interest in this area of the city and county was not strong, but with the closing of the landfill and with the extension of sewer and water, this rural area will experience increasing development pressure.
2. The suitability of the subject property for the uses to which it has been restricted: The site is predominantly zoned "SF-5" Single-family Residential with some areas zoned "LC" Limited Commercial. The zoning would allow for residential development on lots as small as 5,000 square feet, but sewer and water services are not currently available which limits the site's use as currently zoned. However, the presence of the closed landfill probably discourages the development of the site as single-family residential. Approval of the Conditional Use would allow the site to ultimately be redeveloped as a significant public park with lakes and recreation areas.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: During the extraction phase there could be truck traffic, noise and blowing sand when compared to farming operations. However, the conditions of approval and the existing landscaped buffer mitigate these potential negatives. Further, if the site were to be redeveloped as a park the site would become an amenity for the area.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would cause the applicant an economic hardship in that their business is the selling of sand and sand dependent products. Sand has to be produced from sites that contain enough of the material to make it economically worthwhile to mine the site. Not all properties contain sand. The public benefits from a stable and adequate supply of sand since it is an integral part of the construction process; approval would add to the supply of sand.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Wichita Land Use Guide* map depicts this site as being located within the City of Wichita's 2030 "urban service area," and is appropriate for both industrial and open space uses. The Comprehensive Plan contains policies that look favorably on uses that are resource based. The plan also contains recommendations stating that industrial uses should not feed directly to local streets in residential areas; and that industrial areas should be generally located away from existing residential area, and sited so as not to generate industrial traffic through less intensive areas.
6. Impact of the proposed development on community facilities: Sand extraction does not require publicly supplied sewer or water services. No impacts have been identified that are not or cannot be addressed by the development and redevelopment plan.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **GIBBS** seconded the motion, and it carried 12-0.

❖ **PLANNING COMMISSION ITEMS**

9. Case No.: DR2003-16 – Amendments to the Wichita-Sedgwick County Comprehensive Plan

DAVE BARBER Planning staff presented report. Using revised 2010 and 2030 population / employment projections for the Wichita urbanized area based upon Census 2000 baseline data, the Plan update has focused on revising the *2030 Wichita Functional Land Use Guide Map* and the *2030 Wichita and Small City Growth Areas Map*. It is important to note that the 2030 growth areas outlined in the Wichita-Sedgwick County Comprehensive Plan are not prescriptive or binding in nature. They serve only as a reasonable indication as to where future municipal services will likely be extended / available by the year 2030. No significant plan policy changes are being proposed as part of this update to the Comprehensive Plan. Staff feels that the metropolitan-wide "visioneering" initiative currently underway will provide important community direction regarding any major future changes that may be necessary to the current goals and policies of the Comprehensive Plan.

The proposed *2030 Wichita Functional Land Use Guide Map* has been reformatted to reflect functional land use classifications rather than site-specific, facility-based uses. The map also reflects new development activity occurring since January 2002 within the City of Wichita.

The proposed *2030 Wichita and Small City Growth Areas Map* has been revised to reflect the following considerations:

1. Municipal annexations that have occurred since 2002.
2. Revised metropolitan-wide population and employment projections completed in March 2004.
3. Necessary adjustments to the small city 2030 growth / service areas.
4. Necessary adjustments to Wichita's 2030 growth / urban service areas.

A process of public review and feedback was outlined. Staff recommends that the Metropolitan Area Planning Commission support the proposed Plan amendments in principle, and direct staff to initiate a process of public comment and review. In addition, we would like you to set a public hearing date of April 14, 2005.

DUNLAP After April 14th it will go to both Governing Bodies?

BARBER Yes, after the April 14th public hearing. We will be sending written notifications to every Small City, Township in Sedgwick County asking for their official comments. We will be also sending a letter to all Homeowner/Neighborhood Assoc., WABA, WiBA, WIN, inviting them to attend the public meeting that we are going to hold the last week in February.

MCKAY I am not opposed to anything except setting the public hearing for April 14th because three of us will not be here.

HENTZEN Is the meeting in February a vote day or a day for MAPC public hearing?

BARBER April 28th will be the official public hearing.

HENTZEN I would like to suggest that the recommendation/motion to change the word "support" to "review", I don't think we are ready to tell everybody in the County that this is our plan. I am suggesting that we stay in the review process until we hear from the public, because if we have already made up our minds why have a public hearing.

MARNELL Because I am not going to tell you if I support it now or not.

MITCHELL I like the map, but I don't like to word "growth" on either Small City or Wichita Urban, I think we ought to be calling these areas the Service Area. We ought to be listing areas, which we think the municipalities can provide services to within this period, and to just say because we have colored the map this, this is where the community is going to grow within that 25-year period. I think is far beyond what the capability of most of those cities is currently.

SCHLEGEL How about Urban Service Areas?

MITCHELL That is much better.

DUNLAP How do the rest of you feel about?

BISHOP How about Future Urban Service Area might be good?

BARBER I think it is an excellent suggestion, because really when it came right down to it, I think the Advanced Plan Committee was looking at what can each of these communities realistically deliver services to by the year 2030? I have no problem changing the wording to Urban Service Areas.

MITCHELL In the recommendation we say support the proposed Plan amendments in principle, and I don't argue that but there are some specifics over on the graphic 2005 Objective/Strategy Statements. The first one is the reference to the South Central Kansas Water Coalition. As far as I am concerned or have been able to learn, there is no formal body of that name, they have no official support, or where their financing would come from for studies, or administrative action. The most important thing that happened recently as far as water supply in South Central Kansas, and certainly the Equus Beds, was the approval of the Equus Beds of Directors for the submission of the recharge project which the City of Wichita is sponsoring, and that is not even in here.

BARBER It is already covered in the existing plan to support the recharge initiative.

MITCHELL Now, on Item 3, you say we are going to *Ensure* which I have trouble with that the Equus Beds aquifer will not be compromised and I am not sure I know what that means. If you are talking about quality, that is one thing. If you talk about, over use and under production, that is completely different.

BARBER I think it is both a quantity and quality issue, and that recharge is part of that initiative.

MITCHELL How would we go about *ensuring* it?

BARBER I don't know, the details of that would have to be worked out; this is just a strategy statement. There is no implementation detail with any of these strategies. We just don't get into that level of detail like we do with some of our neighborhood plans. This is more of a policy plan.

MITCHELL Item #4, we don't know what the initiatives are that increase natural storm water infiltration?

BARBER We don't know at this time, we are just saying that anything that does it should be supported. This is a policy plan. It is not an implementation plan.

MITCHELL I thought that is what the Comprehensive Plan was. It is a Plan on how services and infrastructure would be provided.

BARBER Only in general terms, these are just guides for development.

SCHLEGEL We are open for suggestions if you want to provide more clarifications, and suggestions on other things that could be listed out there as initiatives.

DUNLAP I think on #1 we got ahead of ourselves because we had a nice presentation one day and the man came in and said this is what I am going to do, but I haven't seen it done.

BARBER We are talking about Bob Meyer from Newton. We received a communication from him a month or two ago, saying that they have incorporated and there are a dozen folks on board now.

DUNLAP I question under what authority he has assumed responsibility, and I don't see that yet. His plan was to gather up all of the individual committees and efforts and put them under his umbrella, and he has declared that, but I don't see anybody going along with that.

MCKAY You have a long road ahead of you because we identify 7 and he was going to gather everyone together. I don't think we need to refer to him, I think he has an organization.

BARBER Maybe we should just say develop a regional water plan to help ensure, etc.

MITCHELL I like that better. I have one more suggestion on the second goal/strategy created a joint Wichita Sedgwick County watershed planning and management task force. We are not going to solve storm water and floodplain issues. We may make recommendations and we make them up as policy.

DUNLAP You want to remove the word "solve" out of that?

MITCHELL Just strike the verb "solve".

MOTION: That the MAPC review the proposed Plan amendments in principle, direct staff to initiate a process of public comment and review, and to hold a public hearing on the amendments to the Comprehensive Plan on April 28, 2005.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (12-0).

10. Case No.: DR2005-01 - Request The City of Kechi seeks Annexation of a Tract of Land located immediately east of I-135, adjacent to the City of Kechi – Resolution No. 04-528

DAVE BARBER The proposed annexation area does fall within the Small City Growth area as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*, adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in 2002. The subject area has not been identified as a future growth area in the City of Kechi's currently adopted Comprehensive Plan. However, based upon the expansions that have occurred to the City of Kechi boundaries since 2002, it is possible that this tract could be efficiently serviced and maintained by the City of Kechi. After review by staff, it has been concluded that the proposed annexation of a tract of land located east of I-135 and adjacent to the Kechi city limits is substantially compliant with the intent of the Wichita-Sedgwick County Comprehensive Plan.

MITCHELL Has the City of Kechi presented a Service Plan for either of these two areas?

BARBER They have not submitted one to us but in their Resolution they say that there is one on file at City Hall.

MITCHELL So there is one on file at the City Clerks office that we can look at until 5 p.m., I don't think that is our responsibility

BARBER No it isn't, our only finding is not whether they can service it but whether this is consistent with the adopted Comprehensive Plan that shows this as a Small City Growth Area.

MITCHELL I don't plan on supporting any annexation for which there is not a service plan.

MOTION: To approve subject to the recommended action from staff.

MARNELL moved, **MCKAY** seconded.

DUNLAP Because I might be challenged with a conflict of interest I will abstain from this vote since I live in the district being annexed.

MOTION CARRIED: 10-1-1. (MITCHELL, opposed. DUNLAP, abstains).

11. Case No.: DR2005-02 – Request The City of Kechi seeks Annexation of Land located near the intersection of Hydraulic and 93rd Street, adjacent to the City of Kechi – Resolution No. 04-529

DAVE BARBER The proposed annexation area does fall within the Small City Growth area as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*, adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in 2002. The subject area has not been identified as a future growth area in the City of Kechi's currently adopted Comprehensive Plan. However, based upon the expansions that have occurred to the City of Kechi boundaries since 2002, it is possible that these tracts could be efficiently serviced and maintained by the City of Kechi. After review by staff, it

has been concluded that the proposed annexation of three tracts of land located near the intersection of Hydraulic and 93rd Street, adjacent to the Kechi city limits is substantially compliant with the intent of the Wichita-Sedgwick County Comprehensive Plan.

MOTION: To approve subject to the recommended action from staff.

MARNELL moved, **MCKAY** seconded.

DUNLAP Because I might be challenged with a conflict of interest I will abstain from this vote since I live in the district being annexed.

MOTION carried 10-1-1. (MITCHELL, opposed. DUNLAP, abstains).

The Metropolitan Area Planning Department informally adjourned at 4:03 p.m.

State of Kansas)
Sedgwick County) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2004.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)